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Keith Bryan Knight

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SUITE 3020

BOCA RATON, FL 33487

EXAMINER

WALSH, JOHN B

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* KEITH BRYAN KNIGHT, JAMES WINSTON LAWWILL, JR.  
and BRIAN L. PULITO

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Application No. 10/679,654  
Technology Center 2400

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Mailed: May 1, 2009

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Before Quita Gould *Supervisory Paralegal Specialist, Review Team*  
Gould, *Supervisory Paralegal Specialist, Review Team*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 02, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**APPEAL BRIEF**

SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated December 3, 2007. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

***Summary of Claimed Subject Matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. While reference to page and line number of the specification requires somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of Claimed Subject Matter” appearing on page 2 of the Appeal Brief dated December 3, 2007 is deficient because it does not separately map independent claims 1, 6 and 9 to the specification by page and line number. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR

41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### **CONCLUSION**

Accordingly, it is ORDERED that the application is returned to the Examiner to:

1. hold the Appeal Brief filed December 3, 2007 defective, as required by 37 CFR § 41.37(d);
2. notify the Appellant to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
3. acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief;
4. for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/KMF

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